

(2) For purposes of subparagraph (1) of this paragraph, the term *losses for that year* includes losses of the trusts from the sale or exchange of capital assets in preceding taxable years not included in the computation of distributable net income of any year, reduced by such losses taken into account in a subsequent preceding taxable year in computing undistributed capital gain but not reduced by such losses taken into account in determining the deduction under section 1211. See section 1212(b)(2) and the regulations thereunder. For example, assume that a trust had a net long-term capital loss in 1970 of \$5,000. During the years 1971 through 1975, the trust had no capital gains or capital losses. In 1976, it has a long-term capital gain of \$8,000, which it allocates to corpus and does not distribute to a beneficiary, but has no taxes attributable to such gain. The undistributed capital gain for 1976 is \$8,000—\$5,000, or \$3,000, even though all or a part of the \$5,000 loss was claimed under section 1211 as a deduction in years 1970 through 1975.

(b) *Foreign trusts.* Distributable net income for a taxable year of a foreign trust created by a U.S. person includes capital gains in excess of capital losses for such year (see § 1.643(a)-6(a)(3)). Thus, a foreign trust created by a U.S. person can never have any undistributed capital gain.

[T.D. 7204, 37 FR 17142, Aug. 25, 1972]

§ 1.665(g)-1A Capital gain distribution.

For any taxable year of a trust, the term *capital gain distribution* means, to the extent of the undistributed capital gain of the trust, that portion of an accumulation distribution that exceeds the amount of such accumulation distribution deemed under section 666(a) to be undistributed net income of the trust for all preceding taxable years. See § 1.665(b)-1A for the definition of “accumulation distribution”. For any such taxable year the undistributed capital gain includes the total undistributed capital gain for all years of the trust beginning with the first taxable year beginning after December 31, 1968, in which income (as determined under section 643(b)) is accumulated, and ending before such taxable year. See § 1.665(g)-2A for application of the

separate share rule. The application of this section may be illustrated by the following example:

Example. A trust on the calendar year basis made the following accumulations. For purposes of this example, the undistributed net income is the same as income under applicable local law. No income was accumulated prior to 1970.

Year	Undistributed net income	Undistributed capital gain
1969	None	\$10,000
1970	\$1,000	3,000
1971	None	4,000

The trust has distributable net income in 1972 of \$2,000 and recognizes capital gains of \$4,500 that are allocable to corpus. On December 31, 1972, the trustee makes a distribution of \$20,000 to the beneficiary. There is an accumulation distribution of \$18,000 (\$20,000 distribution less \$2,000 d.n.i.) that consists of undistributed net income of \$1,000 (see § 1.666(a)-1A) and a capital gain distribution of \$7,000. The capital gain distribution is computed as follows:

Accumulation distribution	\$18,000
Less: Undistributed net income	1,000
Balance	17,000
Capital gain distribution (undistributed capital gain of the trust for 1972 (\$3,000 from 1970 and \$4,000 from 1971))	7,000
Balance (corpus)	10,000

No undistributed capital gain is deemed distributed from 1969 because 1969 is a year prior to the first year in which income is accumulated (1970). The accumulation distribution is not deemed to consist of any part of the capital gains recognized in 1972.

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§ 1.665(g)-2A Application of separate share rule.

(a) *In general.* If the separate share rule of section 663(c) is applicable for any taxable year of a trust, subpart D is applied as if each share were a separate trust except as provided in paragraph (c) of this section and in § 1.668(a)-1A(c). Thus, the amounts of an “accumulation distribution”, “undistributed net income”, “undistributed capital gain”, and “capital gain distribution” are computed separately for each share.

(b) *Allocation of taxes—undistributed net income.* The “taxes imposed on the trust attributable to the undistributed net income” are allocated as follows: